

MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICIAL MINUTES  
APRIL 25, 2013

The regular monthly meeting of the Commission on Environmental Quality was held on Thursday, April 25, 2013, in the Commission Hearing Room, 515 East Amite Street, Jackson, Mississippi, beginning at 9:00 a.m. Commissioners present were:

Charles Dunagin  
Dick Flowers  
Kay Kell  
Chat Phillips, Vice-Chairman  
Jack Winstead

Commissioners Martha Dalrymple and Billy Van Devender were not present.

Others present were: Trudy Fisher, Executive Director; Trey Hess, Roy Furrh, Richard Harrell, and Chris Wells, staff of MDEQ; and other staff members and visitors whose names appear elsewhere in these minutes.

The meeting was called to order by Vice-Chairman Phillips, after which the following business was transacted:

Approval of Minutes

On motion made by Mr. Dunagin and seconded by Mr. Winstead the minutes of the February 28, 2013, meeting were approved and adopted as the Official Minutes.

Approval of Brownfield Completion

Mr. Trey Hess stated on November 21, 2002, the Commission reached a Brownfield Agreement (#4511-02) with Wolverine Tube, Inc. for the remediation of the former Wolverine Tube site in Greenville, Mississippi. On January 30, 2013, and in accordance with Section 702 of the MDEQ Final Brownfield Regulations – Subpart I, dated February 28, 2002, Wolverine Tube sent a petition to the Commission to make a determination as to the completion of Brownfield Agreement and as to the issuance of a “no further action” letter by the Executive Director. The staff of the MDEQ has reviewed the petition, has conducted the required inspection of the Brownfield Agreement Site, and recommended that the Commission issue an order in accordance with the Brownfield Regulations concluding that Wolverine Tube Inc. has completed Brownfield Agreement #4511-02 and that the Notice of Brownfield Agreement Site be cancelled. Following staff presentation and deliberation, on motion made by Mr. Flowers and seconded by Mr. Winstead, the Commission unanimously voted that an order concluding Wolverine Tube, Inc. has completed their Brownfield Agreement and that the notice of Brownfield Agreement Site be canceled, be executed by the Executive Director.

Approval of List of Immediate Response Action Contractors

Mr. Trey Hess stated the following Immediate Response Action Contractors (IRACs) have submitted applications for listing as approved immediate response action contractors for responding to emergency type releases from underground storage tanks regulated by the Underground Storage Tank Program. The staff reviewed the applications and found them complete and acceptable and recommended the Commission approve the following contractors as Immediate Response Action Contractors.

SCS Environmental Group, LLC, 114 Bailey Drive, Olive Branch, Mississippi 38654  
Singley Construction Company, Inc., 1001 Highway 13 South, Columbia, Mississippi 39429  
Walker-Hill Environmental, Inc., 4 South Poplar Street, Foxworth, Mississippi 39483  
Waste Oil Collectors, Inc., 4001 Old Spanish Trail, Gautier, Mississippi 39553  
Performance Oil Equipment, Inc., 920 East McDowell Road, Jackson, Mississippi 39204  
Complete Environmental & Remediation Company, LLC, 37 David Swan Lane,

Purvis, Mississippi 39475

Prewett Enterprises, Inc. (dba B&P), 6230 Stateline Road, Walls, Mississippi 38680

Following staff presentation and deliberation, on motion made by Mr. Flowers and seconded by Mr. Dunagin, the Commission unanimously voted to approve the list of Immediate Response Action Contractors.

#### Approval of Serenity Lane's Request for Evidentiary Hearing

Chuck Rubisoff, a Special Assistant Attorney General with the Attorney General's Office was previously designated by the Commission to serve as a hearing officer. Mr. Rubisoff stated that he presided over a telephonic hearing on October 8, 2012, involving residents of Serenity Lane (Petitioners), Fort James Corporation and MDEQ. The issue at hand was whether jurisdiction existed to conduct a Commission hearing related to Petitioners' request for an evidentiary hearing regarding cleanup of the Serenity Lane property located in Section 25, Township 1 South, Range 16 West, Pearl River County. Petitioners previously requested an evidentiary hearing seeking to direct Fort James Corporation to remediate an alleged old dump purportedly caused by Fort James' predecessor and located in the Serenity Lane Subdivision. MDEQ reviewed the information submitted by the Petitioners and Fort James Corporation and determined in a "no further action" letter dated June 26, 2009, that it did not intend to take further action pertaining to investigation and cleanup of the site and provided the basis in the letter. Fort James Corporation claims MDEQ's "no further action" letter constitutes an order and the Petitioners did not challenge the "order" timely so the Petitioners are not entitled to a hearing before the Commission and have waived their right to do so. Petitioners contend they are entitled to a Commission hearing. MDEQ maintains the Petitioners' request for a hearing should be considered by the Commission, through a hearing officer, and ultimately the Commission, as it believes the MDEQ "no further action" letter did not constitute a Commission or an Executive Director order. Mr. Rubisoff listened to both parties and determined the "no further action" letter did not constitute an order because no party has statutory authority to issue an order on behalf of the Commission, except in limited instances, the Executive Director has that authority, and the Executive Director did not delegate authority for the General Counsel to issue an Order in this matter. Copies of the transcript of the telephonic hearing held on October 8, 2012 (including Exhibits A-E); Orders allowing two (2) Fort James' nonresident attorneys to appear at the telephonic hearing; supplemental authorities submitted by MDEQ and Fort James dated October 22, 2012; and the Findings and Recommendation of the Hearing Officer were previously provided to the Commission for review. Following Mr. Rubisoff's presentation and deliberation, on motion made by Ms. Kell and seconded by Mr. Dunagin, the Commission unanimously voted that a) the MDEQ letter dated June 26, 2009, does not constitute an Order of the Commission or the Executive Director within the meaning of Miss. Code Ann. § 49-17-41 and b) the 30 day time limitation period in Miss. Code Ann. § 49-17-41 to challenge the "order" was not triggered by said letter and c) the Commission is, authorized but not required, to grant a hearing in this matter. On a separate motion made by Mr. Dunagin and seconded by Mr. Flowers, the Commission unanimously voted to approve Petitioners' request to hold an evidentiary hearing. On a third motion made by Mr. Flowers and seconded by Mr. Winstead, the Commission unanimously voted to designate a hearing officer to hear this matter rather than the full Commission.

#### Update on the Renumbered and Reformatted Commission and Permit Board Regulations with Statutory Authorities Pursuant to the Administrative Procedures Act

Mr. Roy Furrh previously briefed the Commission on the amended Administrative Procedures Act ("APA") which requires a statewide administrative code and designates the Secretary of State's office as the official registrar for rules of all state agencies and the publisher of the Mississippi Administrative Bulletin and the Mississippi Administrative Code. The APA amendments specifically require uniform formatting and numbering of all state agency regulations. Mr. Furrh stated MDEQ staff has proceeded with public notice and that a public comment hearing will be held on June 4, 2013, at 2:00 p.m. in Room 104A, 515 East Amite Street, Jackson, Mississippi 39201. An update will be provided to the Commission at the June 27, 2013 meeting. This briefing was for informational purposes only, requiring no action by the Commission.

## Briefing on NRDA, RESTORE Act and Other Oil Spill Restoration Activities

Executive Director Trudy Fisher briefed the Commission on four different areas of restoration activities which are all a part of Mississippi's recovery from the Deepwater Horizon Oil Spill. Ms. Fisher stated we are currently in the injury assessment and restoration planning phase of a National Damage Resource Assessment (NRDA). The second area of restoration recovery is addressed in the RESTORE Act. The Department of Treasury is still in the process of developing regulations for the use of these funds which are a result of 80% of the Clean Water Act civil and administrative penalties. The third area of recovery is covered in Federal Court Consent Decrees and the National Fish and Wildlife Foundation will be administering the funds received as a result of the criminal plea agreement with BP. The last area of recovery is Mississippi's economic and other claims and a lawsuit against BP has recently been filed in both Mississippi state and federal courts.

The Director of the Office of Pollution Control, Richard Harrell briefed the Commission on the Tier 1 projects for Mississippi. Mr. Harrell explained that the State of Mississippi, through its designated Oil Pollution Act Natural Resource Trustee Agency, Mississippi Department of Environmental Quality (MDEQ), received funding in accordance with The Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill and subsequent Project Stipulation filed on June 6, 2012, to be used to implement the Mississippi Oyster Cultch Early Restoration Project. The objective is to restore a total of 1430 acres of oyster beds. The Mississippi Oyster Cultch Early Restoration Project restores and enhances approximately 200 acres in the Pass Christian Reef oyster beds in the Western Mississippi Sound. The remaining 1,230 acres of cultch material will be deployed on additional oyster reefs located in the Western Mississippi Sound in 2013. For the first phase of the Oyster Cultch contract, a Legal Notice/Invitation to Bid dated April 23, 2012, was sent to the Clarion Ledger and Sun Herald newspapers for publication on April 26, 2012 and May 3, 2012. A pre-bid meeting was held on May 15, 2012, at the MDEQ South Regional Office at 1141 Bayview Avenue Biloxi, Mississippi, Suite 208. Mathews Marine was selected as the first phase contractor with a two part contract for Fall 2012 and Spring 2013 deployment at \$40.25/cy for a total contract amount of \$2,999,993.50. The window of opportunity for the cultch Spring deployment will be from April 1 through June 1, 2013, with an outside chance of deploying as early as March 15, 2013. Based on our records, Mathews was able to deploy approximately 20,372.44 CY of limestone cultch during the Fall 2012 deployment. The total first phase contract volume is 74,534 CY; therefore, Mathews will deploy approximately 54,162 CY of cultch during the Spring 2013 deployment to finish out the first contract/phase. For the second phase of the Oyster Cultch contract, a Legal Notice/Invitation to Bid dated November 20, 2012, was sent to the Clarion Ledger and Sun Herald newspapers for publication on November 27, 2012 and December 4, 2012. A pre-bid meeting was held on December 12, 2012, at the MDEQ South Regional Office at 1141 Bayview Avenue Biloxi, Mississippi, Suite 208. Mississippi Marine was selected as the second phase contractor with an additive alternative for oyster shell preference. Their contract for Spring 2013 deployment was \$35.98/cy limestone and \$50.00/cy for oyster shell for a total contract amount of \$3,399,973.94.

Next, Mr. Harrell stated that the State of Mississippi, through its designated Oil Pollution Act Natural Resource Trustee Agency, Mississippi Department of Environmental Quality (MDEQ), received funding in accordance with The Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill and subsequent Project Stipulation filed on June 6, 2012, to be used to implement the Mississippi Near Shore Artificial Reef Early Restoration Project. The objective is to restore and enhance approximately 201 acres of near shore reef habitat in the Mississippi Sound and Bays during the Fall 2012 and Spring 2013 Mississippi Artificial Reef Early Restoration Project. Sixty-seven (67) reefs within Mississippi waters were identified for this project. For the Artificial Reef contract a Legal Notice/Invitation to Bid dated August 23, 2012, was sent to the Clarion Ledger and Sun Herald newspapers for publication on August 29, 2012 and September 5, 2012. A pre-bid meeting was held on September 19, 2012, at the MDEQ South Regional Office at 1141 Bayview Avenue Biloxi, Mississippi, Suite 208. J.E. Borries Inc. was selected as the contractor. Their contract for Spring 2013 deployment was for 28,301 cy at \$53/cy limestone for a total contract amount of \$1,499,953.00.

Finally, Mr. Harrell addressed the budgets for these two projects. The total Mississippi Department of Environmental Quality Tier 1 Early Restoration Budget for oysters as of the quarterly report dated February 13, 2013, is as follows:

Total allocated: \$10,100,000  
 Total received: \$10,100,000  
 Total expended: \$935,175.26  
 Budget Remaining: \$9,164,824.74  
 A \$900,000 contingency budget is available if/when needed

The total Mississippi Department of Environmental Quality Tier 1 Early Restoration Budget for artificial reefs as of the quarterly report dated February 13, 2013, is as follows:

Total allocated: \$2,350,000  
 Total received: \$2,350,000  
 Total expended: \$283,782.40  
 Budget Remaining: \$2,066,217.60  
 A \$250,000 contingency budget is available if/when needed

This briefing was for informational purposes only, requiring no action by the Commission.

Briefing on Administrative Order 6228 13

Mr. Chris Wells stated in 2005 a permit to operate was issued to Pine Belt Waste Systems, LLC, owned by Clarence Woods. In August, 2010 an order was issued to bring Pine Belt Waste Systems, LLC into compliance for dumping violations at the landfill. In May, 2011 a Cease and Desist order was issued and Mr. Woods was ordered to stop receiving new waste. Mr. Woods proceeded to start dumping behind his office so in June, 2011 the case was presented to the Forrest County District Attorney who got an indictment under the "criminal fines" portion of Miss. Code Ann. § 17-17-17. In March, 2013 another Cease and Desist order was issued preventing Mr. Woods from dumping waste anywhere in the state. Mr. Woods continued to dump in random places and eventually caught the attention of the Forrest County Sheriff. Earlier this month, Mr. Woods was arrested on felony dumping charges under Miss. Code Ann. § 95-15-30. This briefing was for informational purposes only, demonstrating how MDEQ can work with local agencies to get results, and requires no action by the Commission.

Solid Waste Assistance Grants and Waste Tire Grants

On previous authority delegated to the Executive Director, MDEQ, the Commission was provided a listing by staff of the following solid waste assistance grants that have been awarded to local governments:

<u>County/Municipality</u>	<u>Grant Amount</u>
Clay County Board of Supervisors	\$ 11,658
Desoto County Board of Supervisors	21,842
Jackson County Board of Supervisors	33,098
Jones County Board of Supervisors	28,140
Lamar County Board of Supervisors	25,192
Prentiss County Board of Supervisors	14,606
Tallahatchie County Board of Supervisors	13,534
Yalobusha County Board of Supervisors	12,060

On previous authority delegated to the Executive Director, MDEQ, the Commission was provided a listing by staff of the following waste tire grants that have been awarded to local governments:

<u>County/Municipality</u>	<u>Grant Amount</u>
Alcorn County Board of Supervisors	\$ 32,000
Jackson County Board of Supervisors	88,000
Leflore County Board of Supervisors	50,000
Three Rivers Solid Waste Management Authority	59,000

Asbestos Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 245 asbestos certifications had been issued since the last report.

Emergency Clean-Up Expenses

On previous authority delegated to the Executive Director, the staff reported the Emergency Clean-Up Expenses incurred since the Commission's last meeting. A list of these expenses is made a part of these minutes and is filed in the Official Minutes File.

Lead Paint Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 130 lead paint certifications had been issued since the last report.

Underground Storage Tank (UST) Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 10 certifications to those who install, alter, or remove underground storage tanks had been issued since the last report.

Wastewater Operator Certifications

On previous authority delegated to the Head, Office of Pollution Control, the staff reported that 47 wastewater operator certificates had been issued since the last report.

Administrative Orders

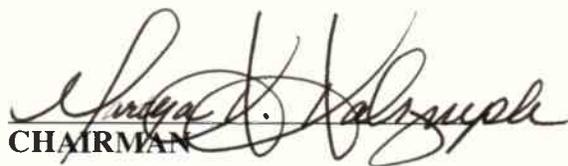
On previous authority delegated to the Executive Director, DEQ, the staff reported that 19 Administrative Orders had been issued since the Commission's last meeting. A list of these orders is made a part of these minutes and is filed in the Official Minutes File.

Setting of Meeting

It was the decision of the Commission to meet next on Thursday, May 23, 2013, beginning at 9:00 a.m., in the Commission Hearing Room, 515 East Amite Street, Jackson, Mississippi.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned.

  
CHAIRMAN

ATTEST:  
  
EXECUTIVE DIRECTOR

